

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Bellville Village Post Office
Bellville, GA 30414

Docket No. A2020-1

UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS
(August 10, 2020)

Pursuant to 39 CFR § 3010.160 and Order No. 5612,¹ the United States Postal Service (Postal Service or USPS) moves to dismiss the City of Bellville's appeal of the Postal Service's determination to close the Bellville Village Post Office because, by operation of law, the Postal Regulatory Commission (Commission or PRC) lacks jurisdiction to hear this appeal.

On July 31, 2020, the City of Bellville, Georgia (Petitioner) through Dylan Edward Mulligan, City Attorney, appealed the Postal Service's determination to close the Bellville Village Post Office, a type of contractor-operated retail facility, located in Bellville, Georgia.² The Petitioner requests that "in accordance with 39 U.S.C. § 404(d)(5)[,]" the Commission review the Postal Service's decision to close the Bellville Village Post Office.³ The Petitioner thereby implies that the Commission has jurisdiction pursuant to 39 U.S.C. § 404(d)(5) over the Postal Service's decision to close this Village Post Office (VPO).

¹ PRC Order No. 5612, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2020-1 (August 3, 2020).

² Village Post Offices are part of the Postal Service's "Approved Postal Provider" network — retail outlets for postal products and services that include Contract Postal Units, Approved Shippers, stamps on consignment locations and Community Post Offices. See United States Postal Service, Village Post Office fact sheet, <https://about.usps.com/news/electronic-press-kits/expandedaccess/vpo-fact-sheet.htm> (last visited Aug. 5, 2020); see also Handbook PO-101, Appendix A – Glossary of Terms.

³ Petitioner's Participant Statement, filed July 31, 2020, at Paragraph 2.

As the Postal Service has consistently maintained in other dockets over the years, the scope of 39 U.S.C. § 404(d) is limited to the discontinuance of Postal Service-operated “Post Offices” and does not apply to contractor-operated retail facilities, which are not owned or operated by the Postal Service. The Commission’s legal authority to receive appeals of the discontinuance of Post Offices does not include the Postal Service’s administration of its contracts. An appeal of a contract matter like the VPO in Bellville, Georgia falls outside the scope of 39 U.S.C. § 404(d)(5). Finally, as detailed below, the Commission recently declined to entertain appeals of the Postal Service’s closing of contractor-operated retail units under circumstances similar to those in Bellville, Georgia.⁴ The Postal Service, therefore, respectfully requests that the Commission dismiss the Petitioner’s appeal.

FACTUAL BACKGROUND

Bellville is a city in Evans County in the state of Georgia. Since June of 2012, it has been served by the Bellville Village Post Office (BVPO), a contractor-operated facility, located at the Bernie’s General Store at 1355 John B. Gordon St., Ste B, Bellville, Georgia, 30414. A Post Office was first established in Bellville, Georgia in August of 1890. The Postal Service discontinued this Post Office in December of 1966, and converted it to a Contract Postal Unit (CPU). The Postal Service terminated the CPU in April of 2012 and established the VPO in June of 2012. The BVPO is located next door to the former CPU, which currently houses 156 Post Office Boxes.

⁴ See discussion of Docket Nos. A2017-2, *Rio Nido, CA*, A2012-88, *Alplaus, NY*, and A2015-2, *Careywood, ID*, *infra*.

Under the BVPO's contract with the Postal Service, the BVPO sells Forever Stamps and offers the 156 Post Office Boxes to customers. These Post Office Boxes are serviced and maintained by the Claxton Administrative Post Office. When the VPO contract was established in 2012, there were 85 active Post Office Boxes. Currently, there are 61 active Post Office Boxes. None of these are Group E Post Office Boxes. The Blue Collection box outside of the BVPO is also part of the contract between the Postal Service and the BVPO. This collection box has had a low daily collection over the last year; customers only dropped approximately 5 – 10 letters in this box daily.

Following its CPU Assessment procedures, the Postal Service determined to terminate its contract for the BVPO, noting steadily declining customer demand and increasing costs per revenue dollar since 2016. Postal Service officials decided to move the Post Office Boxes offered by the BVPO to the nearby Hagan Post Office, located 2.1 miles from the BVPO.⁵ Every customer currently receiving Post Office Box service at the BVPO will be eligible to receive carrier service from the Postal Service. Indeed, several customers in Bellville already receive street delivery service.

By written notice dated July 1, 2020, and placed in each BVPO customer's Post Office Box on July 1, the Postal Service informed customers that the BVPO would permanently close effective August 31, 2020.⁶ The notice explained that

⁵ Google Maps indicates that the BVPO is 2.1 miles from the Hagan Post Office. See also Petitioner's Participant Statement at Exhibit A.

⁶ See Petitioner's Participant Statement at Exhibit A.

all active Post Office Boxes will be relocated to the Hagan Post Office where each customer's Post Office Box service would continue with no disruption in receipt of mail.⁷ Customers that wish to retain their Post Office Box number will not need to change their mailing address and will keep the Bellville, GA 30414 ZIP Code.

In addition to receiving retail and Post Office Box services at the Hagan Post Office, BVPO customers may also obtain retail services at the nearby Claxton (4.1 miles away), Daisy (8.5 miles away), and Collins (8.4 miles away) Post Offices,⁸ and through *usps.com*. Additionally, BVPO customers can purchase stamps through *usps.com* and at multiple nearby businesses in the area; *usps.com* indicates there are 14 such businesses located within 25 miles of the 30414 ZIP Code.

ARGUMENT

The Commission's authority regarding Post Office closing appeals is prescribed by 39 U.S.C. § 404(d)(5) and is limited.⁹ Petitioner's appeal does not fall within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d)(5), because the appeal requests the Commission to review a contract administration decision concerning the operation of a contractor-operated retail facility (*i.e.*, a VPO). Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely

⁷ *Id.*

⁸ Google Maps indicates these distances, measured from the BVPO location.

⁹ 39 U.S.C. § 404(d).

from the terms and conditions of a voluntary contract.¹⁰ Accordingly, issues related to the administration of a services contract for the BVPO, including whether the Postal Service should continue its contract for operation of that facility, do not fall within the Commission's 39 U.S.C. § 404(d)(5) jurisdiction.

Additionally, in numerous recent appeals of the Postal Service's decisions to terminate contracts governing the operation of contractor-operated facilities, the Commission applied its "sole source" test to determine that section 404(d) procedures were intended to apply to contractor-operated retail facilities only when they are the "sole source" of postal services to a community.¹¹ The Postal Service questions the Commission's "sole source" test to determine the applicability of section 404(d) procedures as a proper interpretation of section 404(d). That said, solely for purposes of argument, and without waiver of its prerogative to challenge the Commission's "sole source" test, the Postal Service submits that its application here further buttresses the Postal Service's position that section 404(d) procedures do not apply to its decision to terminate the BVPO. Therefore, the Petitioner's appeal should be dismissed.

I. 39 U.S.C. § 404(d) Does Not Apply to Village Post Offices.

39 U.S.C. § 404(d)(5) provides that an appeal under that section must concern a "closing" of a "post office."¹² Consistent with Handbook PO-101, *Postal Service-Operated Retail Facilities Discontinuance Guide*, a discontinuance occurs only from action directed toward a "Postal Service-

¹⁰ *Id.*

¹¹ See discussion of Docket Nos. A2017-2, *Rio Nido*, A2012-88, *Alplaus* and A2015-2, *Careywood*, *infra*.

¹² *Id.*

operated retail facility.”¹³ VPOs are part of the Postal Service’s “Approved Postal Provider” network — retail outlets for postal products and services that include CPUs, Approved Shippers, stamps on consignment locations and Community Post Offices.¹⁴ VPOs are located within existing communities in a variety of locations, including convenience stores, local businesses and libraries, and are operated by the management of those locations.¹⁵ The definition of “Postal Service-operated retail facility”, therefore, specifically excludes a VPO; as noted above, the BVPO is a type of VPO.¹⁶ Comparatively, the definition of “contractor-operated retail facility” specifically excludes any retail facility operated by a Postal Service employee.¹⁷ Thus, postal regulations are explicit in distinguishing between Postal Service-operated retail facilities and VPOs, and they eliminate any confusion regarding whether a contractor-operated retail facility, including the BVPO, is subject to 39 U.S.C. § 404(d).

Petitioner argues that “the Postal Service has failed to adhere to the applicable laws and regulations governing the discontinuance of post offices, in particular the requirements of 39 C.F.R. § 241.3.”¹⁸ As described above, however, the Postal Service was not subject to these procedures because its decision concerned the administration of a contract by which a third-party

¹³ Handbook PO-101 at Appendix A.

¹⁴ See United States Postal Service, Village Post Office fact sheet, <https://about.usps.com/news/electronic-press-kits/expandedaccess/vpo-fact-sheet.htm> (last visited Aug. 5, 2020); see also Handbook PO-101, Appendix A – Glossary of Terms.

¹⁵ *Id.*

¹⁶ 39 C.F.R. § 241.3(a)(2)(i) (“‘USPS-operated retail facility’ . . . does not include any station, branch, community post office, or other retail facility operated by a contractor.”).

¹⁷ 39 C.F.R. § 241.3(a)(2)(ii) (“‘Contractor-operated retail facility’ includes any . . . community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.”).

¹⁸ Petitioner’s Participant Statement at paragraph 3.

contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to the discontinuance of a “post office”, and that term is understood as a retail facility “operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster. . . .”¹⁹ The term “discontinuance” does not extend to operations at a VPO.²⁰ Thus, the Petitioner’s appeal in this matter does not concern the discontinuance of a Post Office subject to Title 39.

II. Postal Customers are Served by Nearby Post Offices and Alternate Methods of Access; thus, the BVPO is not the “Sole Source” of Retail Services for Bellville.

In recent orders, the Commission found that it did not have jurisdiction to review a Postal Service decision to terminate a contract governing the operation of contractor-operated facilities because these contractor-operated facilities were not the sole source of postal services to the affected community. The Commission has consistently used its “sole source” test to determine its jurisdiction to hear an appeal of a Postal Service decision to close or consolidate contractor-operated offices like a CPU or Community Post Office (CPO).²¹ The Commission’s “sole source” test can similarly be applied to a VPO as it is also a non-Postal Service-operated contract office.²² Because the BVPO does not fall within the Commission’s own stated “sole source” exception espoused in *Knob*

¹⁹ 39 C.F.R. § 241.1.

²⁰ See Handbook PO-101 Section 233.1.

²¹ See discussion of Docket Nos. A2017-2, *Rio Nido*, A2012-88, *Alplaus*, and A2015-2, *Careywood*, *infra*.

²² As noted above, the Postal Service applies the Commission’s “sole source” test solely for purposes of argument, and without waiver of its prerogative to challenge this test or its application in future proceedings before the Commission or in other fora.

Fork and its prodigy, the Commission does not have jurisdiction to hear the Petitioner's appeal concerning this VPO.²³

Most recently, the Commission dismissed an appeal initiated by a group of petitioners requesting to apply 39 U.S.C. § 404(d) to the Postal Service's determination to terminate a contract governing the operation of the Rio Nido, CA Community Post Office (Rio Nido CPO).²⁴ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of this contractor-operated retail facility, and the availability of service at the nearby Guerneville Post Office, located 2.1 miles from the Rio Nido CPO. In this matter, the Commission specifically distinguished between a traditional Post Office and a non-Postal Service-operated contract office like the Rio Nido CPO, and noted that "the Commission, through over 30 years of precedent, has established that the Postal Service's decision to close or consolidate a CPO is only within the Commission's jurisdiction if the CPO is the sole source of postal services to the affected community."²⁵ Based in part on the facts that customers of the Rio Nido CPO would be served by the Guerneville Post Office, the Postal Service committed to relocate the Post Office Boxes located at the Rio Nido facility to the Guerneville Post Office, and Rio Nido customers' access to the limited postal services provided by usps.com, or alternative stamp purchasing options such as grocery stores, the Commission concluded that the Rio Nido CPO is not the sole

²³ Commission Order Remanding Determination for Further Consideration, Docket No. A83-80, *Knob Fork, WV* (January 18, 1984) (*Knob Fork*).

²⁴ PRC Order No. 4088, Order Affirming Determination, PRC Docket No. A2017-2 (September 1, 2017) (*Rio Nido*).

²⁵ *Id.* at 8.

source of postal services to the Rio Nido community.²⁶ The Commission, therefore, determined that it lacked jurisdiction to hear the appeal of the closing of the Rio Nido CPO, and let stand the Postal Service's decision to close the Rio Nido CPO.²⁷

Similarly, the Commission granted the Postal Service's motion to dismiss an appeal of the Postal Service's decision to close the Careywood, Idaho Community Post Office (Careywood CPO).²⁸ Like the Rio Nido CPO and the BVPO, the Careywood, ID CPO was also not a Postal Service-operated retail facility.²⁹ The Postal Service made a determination not to renew a contract with a third-party contractor for operation of the Careywood CPO, and informed customers of this decision, noting that Post Office Box service would be relocated to the Athol, ID Post Office, located 7 miles away from Careywood.³⁰

In its decision in *Careywood*, the Commission noted that "while approved shippers, contract units such as village post offices, and automated postal centers may not be currently available to many postal customers, other categories, such as another postal retail facility approximately a 7 minute drive away, rural carriers, www.usps.com, and the Internet, are available."³¹ The Commission further noted that although these alternatives may not be as convenient as the Careywood CPO, "the Commission's review focuses on whether the Careywood CPO is the sole source of postal services to the

²⁶ *Id.* at 10-11.

²⁷ *Id.* at 12.

²⁸ PRC Order No. 2505, Order Dismissing Appeal, PRC Docket No. A2015-2 (May 27, 2015), at 15 (*Careywood*).

²⁹ *Id.* at 2-3.

³⁰ *Id.* at 3-4.

³¹ *Id.* at 12.

community, not whether it is the most convenient or desirable source of postal services.”³² The Commission concluded, therefore, that the Careywood CPO was not the sole source of postal services to the community of Careywood and that there was no basis to remand the matter to require the Postal Service to follow the 404(d) closing procedures.³³

Moreover, the Commission dismissed an appeal in which a postal customer petitioned the Commission to apply section 404(d) to a decision to terminate a contract governing the operation of the Alplaus, NY Community Post Office (Alplaus CPO).³⁴ Like the Careywood, ID CPO, the Rio Nido CPO, and the BVPO, the Alplaus CPO was also not a Postal Service-operated retail facility.³⁵ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of the Alplaus CPO, a contractor-operated retail facility, and the availability of service at a nearby Post Office, Rexford Post Office, which was located approximately one mile away.³⁶ Because postal customers of the Alplaus CPO were served by the nearby Rexford Post Office and had numerous other retail service options available to them, the Commission determined that section 404(d) did not apply under the *Knob Fork* “sole source” standard.³⁷

Akin to the facts in the *Rio Nido*, *Careywood*, and *Alplaus* cases, BVPO customers will also still be served by a nearby Post Office. BVPO customers will

³² *Id.* at 12-13.

³³ *Id.* at 13.

³⁴ PRC Order No. 1293, Order Dismissing Appeal, PRC Docket No. A2012-88 (March 21, 2012) (*Alplaus*).

³⁵ *Id.* at 2.

³⁶ *Id.* at 6.

³⁷ *Id.*; see *Knob Fork*, *supra*.

be served by the Hagan Post Office, which is located only 2.1 miles from the BVPO. This is closer than the availability of the nearest post office in the Rio Nido (2.1 miles) and Careywood (about 7 miles) cases and only slightly farther than the availability of the nearest post office in the *Alplaus* (about 1 mile) case. Additionally, the Postal Service will relocate the Post Office Box service from the BVPO to the Hagan Post Office, as in the *Rio Nido* and *Careywood* cases. Moreover, BVPO customers will continue to be eligible for rural carrier service and will have access to the postal services provided by usps.com and alternative stamp purchasing options offered by many retail businesses in the area.³⁸ Based on these facts, the Commission should also determine in this case that section 404(d) does not apply to the Postal Service's decision to close the BVPO under the Commission's *Knob Fork* "sole source" standard.³⁹

III. Strong Policy Reasons Support the Postal Service's Position that the Commission Lacks Jurisdiction to Consider the Appeal of a Contract Administration Decision for a Contract with a Third-Party VPO Operator.

The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation.⁴⁰

The Postal Service's ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance,

³⁸ This illustrates the Postal Service's continuing commitment to provide postal services through more than traditional "brick and mortar," USPS-operated retail facilities. Since the time of the *Knob Fork* decision, the Postal Service has made considerable strides in providing increased access to retail postal services through a myriad of methods, including traditional Post Offices, contract postal units, rural and highway carriers, Village Post Offices, Self-Service Kiosks, Approved Shippers, usps.com, and consignment stamp retailers. The Commission and Commissioners have taken note of these newer avenues of postal access in past dockets. See *Careywood*, *supra*. See also *Alplaus*, *supra* (concurring opinion of Commissioner Taub).

³⁹ See *Knob Fork*, *supra*.

⁴⁰ See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011).

would be harmed if parties had the option of appealing contractual decisions. A third party, the Commission, would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process. In many situations, applying the section 404(d) procedures to VPO contract decisions would provide contractors with a bargaining advantage over the Postal Service, and force the agency to continue operating a contract, or enter a new contract, even where sound business judgment would clearly suggest otherwise. This imbalance in bargaining power would arise most acutely where a VPO operator is the only person in the community capable of operating the VPO. Because the participation of the VPO operator would be necessary to perform the analysis required by section 404, a VPO operator could prevent the Postal Service from satisfying section 404 by refusing to cooperate, or it could extort money from the Postal Service in exchange for cooperation.

CONCLUSION

For the reasons discussed, the United States Postal Service respectfully requests that the Commission dismiss the City of Bellville's appeal of the Postal Service's determination to close the Bellville Village Post Office.

Respectfully submitted,

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